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January 3, 2014

*Via First Class Mail*

Regional Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street (3CG10)  
Philadelphia, PA 19103

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460



Re: FOIA Request—Sewage Consent Decrees

Dear Freedom of Information Act Officers:

Waterkeepers Chesapeake, Inc. ("WKC"), through its undersigned counsel, requests the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") and Environmental Protection Agency ("EPA") regulations, 40 C.F.R. § 2.100, *et seq.*

I. Description of Records Sought

Please identify and produce the following records:

1. Any and all consent decrees ("Decrees") still in effect and relating to sewer overflows in Maryland and the District of Columbia.
2. Any and all settlement agreements ("Agreements"), other than consent decrees, still in effect and relating to sewer overflows in Maryland and the District of Columbia.

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## II. Request for a Fee Waiver

WKC requests that EPA waive the fee that it would otherwise charge for search and production of the records described in Section I as these disclosures will benefit the public interest. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily for the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements.

### A. First Requirement

WKC’s requested disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). Specifically, the requested disclosure would satisfy the four elements identified at 40 C.F.R. § 2.107(l)(2).

1. The subject matter of the requested records must specifically concern identifiable activities of the government.

WKC’s FOIA request seeks records that pertain to activities mandated by the Clean Water Act. EPA’s enforcement of the Clean Water Act in relation to sewage overflows is an important and identifiable governmental activity. Records responsive to this FOIA request will contribute to the public’s understanding of the EPA’s oversight of local sewage systems.

2. For the disclosure to be “likely to contribute” to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The topics of this FOIA request relate to matters of public concern. Sewage overflows threaten both human health and the environment. Sewage overflows are common in Maryland and the District of Columbia, and the requested documents will inform the public regarding EPA’s enforcement and compliance actions with respect to these discharges. The requested documents will also inform the public about any required remedial measures and other compliance activities. The requesting party, WKC, is a non-profit organization dedicated to local advocacy on water quality issues. WKC is a coalition of independent programs working to make the local waterways of the Chesapeake and Coastal Bays swimmable and fishable. WKC’s members are the eighteen independent Waterkeeper organizations within the Chesapeake Bay and Coastal Bays regions, which cover six states and Washington, DC, from Lancaster County, PA to the Shenandoah Valley, to the Atlantic Ocean. The waterways that flow from those areas into the Chesapeake Bay are threatened by pollution and waste, which in turn threatens the Bay itself. Each member of WKC fights to clean up one of those waterways, and WKC amplifies the voices of those members and mobilizes them to fight pollution and champion clean water. WKC has no commercial interest in the disclosures, nor will it benefit financially from the disclosure of this information. The information will help WKC and WKC’s local member programs better monitor and protect water quality.



3. The disclosure must contribute to an understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested information will better educate WKC and local citizens about the existence and scope of problems related to sewage overflows. WKC and its member programs can educate the public about the history of sewage overflows in Maryland and the District of Columbia and ongoing remedial actions designed to improve public health and local water quality. WKC can disseminate the information acquired through this request to the general public through its local member programs.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

Records responsive to WKC's FOIA request will alert the public to areas with persistent sewage overflow problems. These records will also inform the public as to obligations imposed by Decrees and Agreements, including remediation and monitoring requirements. The public has a substantial interest in maintaining the quality of the waters of Maryland and the District of Columbia, particularly with respect to pathogens and other harmful pollutants discharged during sewage overflows. Disclosure of the requested documents will promote public awareness of an issue important to human health and the environment.

#### B. Second Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request in that WKC has no commercial interest that would be furthered by the requested disclosure. WKC is a not-for-profit organization dependent on volunteer support. As such, it has no commercial interest that would be furthered by the disclosure of the requested records.

### III. Willingness to Pay Fees Under Protest

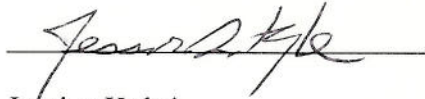
In order to prevent delay in EPA's provision of the requested records, WKC states that it will, if necessary and under protest, pay fees in accordance with 40 C.F.R. § 2.107(c)(iv). Such payment will not constitute any waiver of WKC's right to seek administrative or judicial review of any denial of their fee waiver request and/or rejection of their fee category assertion. If fees are not waived, please provide WKC with a detailed estimate of the costs associated with compliance of this request prior to request fulfillment.

### IV. Conclusion

WKC requests that EPA strictly comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. See e.g., C.F.R. § 2.104(a)-(d) and (f)(i). Please produce the requested records (preferably electronically and in hard copy) by sending them care of Jessica Kyle at the address listed below.

Please contact me with any questions. Thank you for your anticipated assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Kyle", is written over a horizontal line.

Jessica Kyle\*

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\*Practicing pursuant to Rule 16 of the Maryland Rules